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6 Attorneys for Plaintiff  
NANCY HAREWOOD

8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA

10 NANCY HAREWOOD, an  
11 individual,

12 Plaintiff,

13 vs.

14 KELLY MOORE, an  
individual, and  
15 MAUREEN GRADY, an  
individual,

16 Defendants.  
17

LEAD CASE NO.: CV12-07448 GAF (JCGx)  
Consolidated for all purposes with  
Case No. CV 12-07992 GAF(JCGx)  
The Honorable Gary A. Feess

**~~PROPOSED~~ STIPULATED  
PROTECTIVE ORDER**

COMPLAINT FILED: August 29, 2012  
IN LEAD CASE  
TRIAL DATE: March 25, 2014

NOTE CHANGES MADE BY THE COURT.

18  
19  
20 AND RELATED ACTIONS

1           1.     PURPOSES AND LIMITATIONS

2           Disclosure and discovery activity in this action are likely to involve production  
3 of confidential, proprietary, or private information for which special protection from  
4 public disclosure and from use for any purpose other than prosecuting this matter  
5 would be warranted. Accordingly, the parties hereby stipulate to and petition this  
6 Court to enter the following Stipulated Protective Order. The parties acknowledge  
7 that this Order does not confer blanket protections on all disclosures or responses to  
8 discovery and that the protection it affords extends only to the limited information or  
9 items that are entitled under the applicable legal principles to treatment as  
10 confidential. The parties have agreed that the terms of this Protective Order shall also  
11 apply to any future voluntary disclosures of confidential, proprietary or private  
12 information. The parties reserve their rights to object to or withhold any information  
13 including confidential, proprietary or private information on any other applicable  
14 grounds permitted by law, including third party rights and relevancy.

15           2.     DEFINITIONS

16           2.1    Party: any party to this action, including all of its officers,  
17 directors, employees, consultants, retained experts, and outside counsel (and their  
18 support staff).

19           2.2    Disclosure or Discovery Material: all items or information,  
20 regardless of the medium or manner generated, stored, or maintained (including,  
21 among other things, testimony, transcripts, or tangible things) that are produced or  
22 generated in disclosures or responses to discovery in this matter.

23           2.3    "Confidential" Information or Items: information (regardless of  
24 how generated, stored or maintained) or tangible things that qualify for protection  
25 under standards developed under F.R.Civ.P. 26(c) and that contains or constitutes the  
26 following:

- 1 (a) business plans, strategic plans, and marketing strategies or plans;
- 2 (b) unpublished literary works or materials;
- 3 (c) non-public market research, including market surveys and customer
- 4 surveys;
- 5 (d) non-public financial and sales data, budgets and projections, and all
- 6 information relating to revenues, costs, profits, cash flow, assets and
- 7 liabilities, and reports containing such information;
- 8 (e) customer identities and customer financial information;
- 9 (f) the financial terms of agreements other than sales to the general public;
- 10 (g) descriptions of products or services that have not yet been made
- 11 available for sale;
- 12 (h) licenses, license fees, and license agreements, and co-branding
- 13 agreements;
- 14 (i) employment files and information required to be kept confidential under
- 15 federal, state and local law; or
- 16 (j) information required to be kept confidential pursuant to an agreement
- 17 or understanding with nonparties.

18 2.4 "Attorney's Eyes Only": Discovery Material or such portion of  
 19 such material as consists of:

20 a) any commercially sensitive and/ or confidential business or  
 21 financial information (including without limitation confidential nonpublic contracts,  
 22 profitability reports or estimates, sales reports, and sales margins);

23 b) any business or financial information that is confidential,  
 24 proprietary, or commercially sensitive to third parties who have had business dealings  
 25 with parties to this action; or

26 c) any other category of material or information hereinafter given  
 27

1 Confidential status by the Court.

2           2.5 Receiving Party: a Party that receives Disclosure or Discovery  
3 Material from a Producing Party.

4           2.6 Producing Party: a Party or non-party that produces Disclosure or  
5 Discovery Material in this action.

6           2.7 Designating Party: a Party or non-party that designates  
7 information

8 or items that it produces in disclosures or in responses to discovery, including the  
9 documents produced by Defendants for the purpose of settlement discussions prior  
10 to the time that this Stipulated Protective Order was entered into, as  
11 "CONFIDENTIAL" or "ATTORNEY'S EYES ONLY."

12           2.8 Protected Material: any Disclosure or Discovery Material that is  
13 designated as "CONFIDENTIAL" or as "ATTORNEY'S EYES ONLY."

14           2.9 Expert: a person with specialized knowledge or experience in a  
15 matter pertinent to the litigation who has been retained by a Party or its counsel to  
16 serve as an expert witness or as a consultant in this action. This definition includes  
17 a professional jury or trial consultant retained in connection with this litigation. The  
18 expert witness or consultant may not be a past or a current employee of the Party  
19 (including any affiliates or related entities) adverse to the Party engaging the expert  
20 witness or consultant, or someone who at the time of retention is anticipated to  
21 become an employee of the Party (including any affiliates or related entities) adverse  
22 to the Party engaging the expert witness or consultant. Moreover, the expert witness  
23 or consultant may not be a current employee or anticipated to become an employee  
24 of any entity who is a competitor of the Party adverse to the Party engaging the expert  
25 witness or consultant.

1           2.10 Professional Vendors: persons or entities that provide litigation  
 2 support services (e.g., photocopying; videotaping; translating; preparing exhibits or  
 3 demonstrations; organizing, storing, retrieving data in any form or medium; etc.) and  
 4 their employees and subcontractors.

5           3. SCOPE

6           The protections conferred by this Stipulation and Order cover not only  
 7 Protected  
 8 Material (as defined above), but also any information copied or extracted therefrom,  
 9 as well as all copies, excerpts, summaries, or compilations thereof, plus testimony,  
 10 conversations, or presentations by parties or counsel to or in arbitration or in other  
 11 settings that might reveal Protected Material.

12           4. DURATION

13           Even after the termination of this ~~arbitration~~<sup>action</sup>, the confidentiality obligations  
 14 imposed by this Order shall remain in effect until a Designating Party agrees  
 15 otherwise in writing or a court order otherwise directs.

16           5. DESIGNATING PROTECTED MATERIAL

17           5.1 Exercise of Restraint and Care in Designating Material for  
 18 Protection. Each Party or non-party that designates information or items for  
 19 protection  
 20 under this Order must take care to limit any such designation to specific material that  
 21 qualifies under the appropriate standards. A Designating Party must take care to  
 22 designate for protection only those parts of material, documents, items, or oral or  
 23 written communications that qualify – so that other portions of the material,  
 24 documents, items, or communications for which protection is not warranted are not  
 25 swept unjustifiably within the ambit of this Order.

1 Mass, indiscriminate, or routinized designations are prohibited. Designations  
2 that are shown to be clearly unjustified, or that have been made for an improper  
3 purpose (e.g., to unnecessarily encumber or retard the case development process, or  
4 to impose unnecessary expenses and burdens on other parties), expose the  
5 Designating Party to sanctions.

6 If it comes to a Party's or a non-party's attention that information or items that  
7 it designated for protection do not qualify for protection at all, or do not qualify for  
8 the level of protection initially asserted, that Party or non-party must promptly notify  
9 all  
10 other parties that it is withdrawing the mistaken designation.

11 5.2 Manner and Timing of Designations. Except as otherwise  
12 provided  
13 in this Order (see, e.g., second paragraph of section 5.2(a), below), or as otherwise  
14 stipulated or ordered, material that qualifies for protection under this Order must be  
15 clearly so designated before the material is disclosed or produced.

16 Designation in conformity with this Order requires:

17 (a) for information in documentary form (apart from transcripts  
18 of depositions or other pretrial or trial proceedings), that the Producing Party affix the  
19 legend "CONFIDENTIAL" or "ATTORNEY'S EYES ONLY" at the top or bottom  
20 of each page that contains protected material.

21 A Party or non-party that makes originals or copies of documents  
22 or materials available for inspection need not designate them for protection until after  
23 the inspecting Party has indicated which material it intends to copy. During the  
24 inspection and before the designation, all of the material made available for  
25 inspection shall be deemed "ATTORNEY'S EYES ONLY". After the inspecting  
26 Party has identified the documents it wants copied and produced, the Producing Party  
27

1 must designate, either in writing or on the record (at a deposition), which documents,  
 2 or portions thereof, qualify for protection under this Order, then the Receiving Party  
 3 must affix the "CONFIDENTIAL" or "ATTORNEY'S EYES ONLY" legend at the  
 4 top of each copied page that contains Protected Material. If only a portion or portions  
 5 of the material on a page qualifies for protection, the Producing Party also must  
 6 clearly identify the protected portion(s) (e.g., by making appropriate markings in the  
 7 margins) and must specify, for each portion, the level of protection being asserted  
 8 (either "CONFIDENTIAL" or "ATTORNEY'S EYES ONLY").

9 (b) for testimony given in deposition ~~or in other pretrial or trial~~  
 10 ~~proceedings~~, that the Party or non-party offering or sponsoring the testimony identify  
 11 on the record, before the close of the deposition, ~~hearing, or other proceeding~~, all  
 12 protected testimony, and further specify any portions of the testimony that qualify as  
 13 "CONFIDENTIAL" or "ATTORNEY'S EYES ONLY." When it is impractical to  
 14 identify separately each portion of testimony that is entitled to protection, and when  
 15 it appears that substantial portions of the testimony may qualify for protection, the  
 16 Party or non-party that sponsors, offers, or gives the testimony may invoke on the  
 17 record (before the deposition or proceeding is concluded) a right to have up to 20  
 18 days to identify the specific portions of the testimony as to which protection is sought  
 19 and to specify the level of protection being asserted ("CONFIDENTIAL" or  
 20 "ATTORNEY'S EYES ONLY"). Only those portions of the testimony that are  
 21 appropriately designated for protection within the 20 days shall be covered by the  
 22 provisions of this Stipulated Protective Order.

23 Transcript pages containing Protected Material must be separately  
 24 bound by the court reporter, who must affix to the top of each such page the legend  
 25 "CONFIDENTIAL" or "ATTORNEY'S EYES ONLY," as instructed by the Party or  
 26 nonparty offering or sponsoring the witness or presenting the testimony.



(c) for information produced in some form other than documentary, and for any other tangible items, that the Producing Party affix in a prominent place on the exterior of the container or containers in which the information or item is stored the legend "CONFIDENTIAL" or "ATTORNEY'S EYES ONLY." If only portions of the information or item warrant protection, the Producing Party, to the extent practicable, shall identify the protected portions, specifying whether they qualify as "CONFIDENTIAL" or as "ATTORNEY'S EYES ONLY."

5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items as "CONFIDENTIAL" or "ATTORNEY'S EYES ONLY" does not, standing alone, waive the Designating Party's right to secure protection under this Order for such material. If material is appropriately designated as "CONFIDENTIAL" or "ATTORNEY'S EYES ONLY" after the material was initially produced, the Receiving Party, on timely notification of the designation, must make reasonable efforts to assure that the material is treated in accordance with the provisions of this Order.

## 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1 Timing of Challenges. Unless a prompt challenge to a Designating Party's confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary economic burdens, or a later significant disruption or delay of the litigation, a Party does not waive its right to challenge a confidentiality designation by electing not to mount a challenge promptly after the original designation is disclosed.

6.2 Meet and Confer. A Party that elects to initiate a challenge to a Designating Party's confidentiality designation must do so in good faith and must begin the process by conferring with counsel for the Designating Party in writing. In



1 conferring, the challenging Party must explain the basis for its belief that the  
 2 confidentiality designation was not proper and must give the Designating Party an  
 3 opportunity to review the designated material, to reconsider the circumstances, and,  
 4 if no change in designation is offered, to explain the basis for the chosen designation.  
 5 A challenging Party may proceed to the next stage of the challenge process only if it  
 6 has engaged in this meet and confer process first.

7           6.3 Court Intervention. A Party that elects to press a challenge to a  
 8 confidentiality designation after considering the justification offered by the  
 9 Designating Party may file and serve a motion that identifies the challenged material  
 10 and sets forth in detail the basis for the challenge. Each such motion must be  
 11 accompanied by a competent declaration that affirms that the movant has complied  
 12 with the meet and confer requirements imposed in the preceding paragraph and that  
 13 sets forth with specificity the justification for the confidentiality designation that was  
 14 given by the Designating Party in the meet and confer dialogue. The parties agree that  
 15 a confidentiality designation shall not create a presumption in favor of such  
 16 confidentiality designation, and that the Court shall decide the issue as such.

17           Until the Court rules on the challenge, all parties shall continue to  
 18 afford the material in question the level of protection to which it is entitled under the  
 19 Producing Party's designation.

## 20           7. ACCESS TO AND USE OF PROTECTED MATERIAL

21           7.1 Basic Principles. A Receiving Party may use Protected Material  
 22 that is disclosed or produced by another Party or by a non-party in connection with  
 23 this case only for prosecuting, defending, or attempting to settle this litigation. Such  
 24 Protected Material may be disclosed only to the categories of persons and under the  
 25 conditions described in this Order. When the litigation has been terminated, a  
 26  
 27  
 28

1 Receiving Party must comply with the provisions of section 11, below (FINAL  
2 DISPOSITION).

3 Protected Material must be stored and maintained by a Receiving Party  
4 at a location and in a secure manner that ensures that access is limited to the persons  
5 authorized under this Order.

6 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless  
7 otherwise ordered by the Court or permitted in writing by the Designating Party, a  
8 Receiving Party may disclose any information or item designated "CONFIDENTIAL"  
9 only to:

10 (a) the Party him or herself;

11 (b) the Receiving Party's outside counsel and in-house counsel,  
12 as well as paralegals and/or employees of said outside counsel or in-house counsel  
13 to whom it is reasonably necessary to disclose the information  
14 for this litigation;

15 (c) Board members, officers and directors of the Receiving  
16 Party;

17 (d) Other employees of the Receiving Party to whom disclosure  
18 is reasonably necessary for this litigation and who are bound by internal  
19 confidentiality obligations as part of their employment or who have signed the  
20 "Agreement to Be Bound by Protective Order" (Exhibit A);

21 (e) Experts (as defined in this Order) of the Receiving Party to  
22 whom disclosure is reasonably necessary for this litigation and who have signed the  
23 "Agreement to Be Bound by Protective Order" (Exhibit A);

24 (f) the Court personnel assigned to this litigation;

25 (g) court reporters, their staffs, and professional vendors to  
26 whom disclosure is reasonably necessary for this litigation and who have signed the  
27

1 “Agreement to Be Bound by Protective Order” (Exhibit A);

2 (h) during their depositions; witnesses in the action to whom  
3 disclosure is reasonably necessary and who have signed the “Agreement to Be Bound  
4 by Protective Order” (Exhibit A). Pages of transcribed deposition testimony or  
5 exhibits to depositions that reveal Protected Material must be separately bound by the  
6 court reporter and may not be disclosed to anyone except as permitted under this  
7 Stipulated Protective Order; and

8 (i) the author and recipients of the document or the original  
9 source of the information.

10 7.3 Disclosure of “ATTORNEY’S EYES ONLY” Information or  
11 Items. Unless otherwise ordered by the Court or permitted in writing by the  
12 Designating Party, a Receiving Party may disclose any information or item designated  
13 “ATTORNEY’S EYES ONLY” only to:

14 (a) the Party him or herself;

15 (b) the Receiving Party’s Outside Counsel, as well as  
16 employees of said Outside Counsel to whom it is reasonably necessary to disclose the  
17 information for this litigation;

18 (c) Experts (as defined in this Order) of the Receiving Party to  
19 whom disclosure is reasonably necessary for this litigation and who have signed the  
20 “Agreement to Be Bound by Protective Order” (Exhibit A);

21 (d) the Court personnel assigned to this litigation;

22 (e) court reporters, their staffs, and professional vendors to  
23 whom disclosure is reasonably necessary for this litigation and who have signed the  
24 “Agreement to Be Bound by Protective Order” (Exhibit A); and

25 (f) the author and recipients of the document or the original  
26 source of the information.

1  
2 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED  
3 PRODUCED IN OTHER LITIGATION

4 If a Receiving Party is served with a subpoena or an order issued in other  
5 litigation that would compel disclosure of any Discovery Material, the Receiving  
6 Party must so notify the Designating Party, in writing immediately and in no event  
7 more than five business days after receiving the subpoena or order. Such notification  
8 must include a copy of the subpoena or court order. The Receiving Party also must  
9 immediately inform in writing the Party who caused the subpoena or order to issue  
10 in the other litigation that some or all the material covered by the subpoena or order  
11 is the subject of this Protective Order. In addition, the Receiving Party must deliver  
12 a copy of this Stipulated Protective Order promptly to the Party in the other action  
13 that caused the subpoena or order to issue.

14 The purpose of imposing these duties is to alert the interested parties to  
15 the existence of this Protective Order and to afford the Designating Party in this case  
16 an opportunity to try to protect its confidentiality interests in the court from which the  
17 subpoena or order issued. The Designating Party shall bear the burdens and the  
18 expenses of seeking protection in that court of its confidential material – and nothing  
19 in these provisions should be construed as authorizing or encouraging a Receiving  
20 Party in this action to disobey a lawful directive from another court.

21 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

22 If a Receiving Party learns that, by inadvertence or otherwise, it has  
23 disclosed Protected Material to any person or in any circumstance not authorized  
24 under this Stipulated Protective Order, the Receiving Party must immediately (a)  
25 notify in writing the Designating Party of the unauthorized disclosures, (b) use its  
26 best efforts to retrieve all copies of the Protected Material, (c) inform the person or  
27

1 persons to whom unauthorized disclosures were made of all the terms of this Order,  
2 and (d) request such person or persons to execute the "Acknowledgment and  
3 Agreement to Be Bound" that is attached hereto as Exhibit A.

4 10. FILING PROTECTED MATERIAL. If any Protected Material is  
5 included with any papers filed with the court, the filing party shall file such Protected  
6 Material under seal in the manner set forth in California Central District Local Rule  
7 79-5.1 and Judge Feess' Standing Order Re: Protective Orders and Treatment of  
8 Confidential Information, a copy of which is attached hereto as Exhibit "B", or other  
9 similar Court rules that may be controlling at the time of the filing of the Protected  
10 Material.

11 11. FINAL DISPOSITION. Unless otherwise ordered or agreed in writing  
12 by the Producing Party, within sixty days after the final termination of this action,  
13 each Receiving Party must return all Protected Material to the Producing Party. As  
14 used in this subdivision, "all Protected Material" includes all copies, abstracts,  
15 compilations, summaries or any other form of reproducing or capturing any of the  
16 Protected Material. With permission in writing from the Designating Party, the  
17 Receiving Party may destroy some or all of the Protected Material instead of  
18 returning it. Whether the Protected Material is returned or destroyed, the Receiving  
19 Party must submit a written certification to the Producing Party (and, if not the same  
20 person or entity, to the Designating Party) by the sixty day deadline that identifies (by  
21 category, where appropriate) all the Protected Material that was returned or destroyed  
22 and that affirms that the Receiving Party has not retained any copies, abstracts,  
23 compilations, summaries or other forms of reproducing or capturing any of the  
24 Protected Material.

25 Notwithstanding this provision, Counsel are entitled to retain an archival  
26 copy of all pleadings, motion papers, transcripts, legal memoranda, correspondence  
27

1 or attorney work product, even if such materials contain Protected Material. Any such  
 2 archival copies that contain or constitute Protected Material remain subject to this  
 3 Protective Order as set forth in Section 4 (DURATION), above.

4 12. MISCELLANEOUS

5 12.1 Right to Further Relief. Nothing in this Order abridges the right  
 6 of any person to seek its modification in the future.

7 12.2 Right to Assert Other Objections. By stipulating to the entry of  
 8 this Protective Order no Party waives any right it otherwise would have to object to  
 9 disclosing or producing any information or item on any ground not addressed in this  
 10 Stipulated Protective Order. Similarly, no Party waives any right to object on any  
 11 ground to use in evidence of any of the material covered by this Protective Order.

12 12.3 Inadvertent Production of Privileged Documents. If a Party,  
 13 through inadvertence, produces any document or information that it believes is  
 14 immune from discovery pursuant to an attorney-client privilege, the work product  
 15 privilege, or any other privilege, such production shall not be deemed a waiver of any  
 16 privilege, and the Producing Party may give written notice to the Receiving Party that  
 17 the document or information produced is deemed privileged and that return of the  
 18 document or information is requested. Upon receipt of such notice, the Receiving  
 19 Party shall immediately gather the original and all copies of the document or  
 20 information of which the Receiving Party is aware, in addition to any abstracts,  
 21 summaries, or descriptions thereof, and shall immediately return the original and all  
 22 such copies to the Producing Party. Nothing stated herein shall preclude a Party from  
 23 challenging an assertion by the other Party of privilege or confidentiality.

24 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**


1 DATED: April 19, 2013

KRANE & SMITH, APC

2  
3  
4 By:   
5 RALPH C. LOEB  
6 Attorneys for Plaintiff NANCY  
7 HAREWOOD

8 DATED: April 19, 2013

BROWNE GEORGE ROSS LLP

9  
10 By:   
11 ERIC M. GEORGE  
12 PETER SHIMAMOTO  
13 Attorney for Defendant  
14 MAUREEN GRADY

15 DATED: April \_\_, 2013

16 By: MARK KESTER BROWN  
17 Attorney for Defendant and Cross-  
18 Complainant KELLY MOORE and  
19 Defendant SCHOLASTIC, INC.

20 PURSUANT TO STIPULATION, IT IS SO ORDERED.

21 DATED: April 23, 2013

22 By:   
23 Honorable Jay C. Gandhi  
24 Magistrate Judge



1 DATED: April \_\_, 2013

KRANE & SMITH, APC

2  
3  
4 By: \_\_\_\_\_

5 RALPH C. LOEB  
6 Attorneys for Plaintiff NANCY  
7 HAREWOOD

8 DATED: April \_\_, 2013

BROWNE GEORGE ROSS LLP

9  
10 By: \_\_\_\_\_

11 ERIC M. GEORGE  
12 PETER SHIMAMOTO  
13 Attorney for Defendant  
14 MAUREEN GRADY

15 DATED: April 19, 2013

16 By: \_\_\_\_\_

17 MARK KESTER BROWN  
18 Attorney for Defendant and Cross-  
19 Complainant KELLY MOORE and  
20 Defendant SCHOLASTIC, INC.

21 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

22 DATED: April \_\_, 2013

23 By: \_\_\_\_\_

24 Honorable Jay C. Gandhi  
25 Magistrate Judge

**EXHIBIT A****ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I, \_\_\_\_\_ [print  
full name],  
of \_\_\_\_\_ [print full  
address], declare under penalty of perjury that I have read in its entirety and  
understand the Stipulated Protective Order that was issued by the United States  
District Court for the Central District of California in the case of *Nancy Harewood*  
*v. Kelly Moore, et al.*, Case No. CV12-7448 GAF consolidated for all purposes  
with Case No. CV 12-07992 GAF (JCGx). I agree to comply with and to be bound  
by all the terms of this Stipulated Protective Order and I understand and  
acknowledge that failure to so comply could expose me to sanctions and  
punishment in the nature of contempt. I solemnly promise that I will not disclose  
in any manner any information or item that is subject to this Stipulated Protective  
Order to any person or entity except in strict compliance with the provisions of  
this Order.

I further agree to submit to the jurisdiction of the United States District  
Court for the Central District of California for the purpose of enforcing the terms  
of this Stipulated Protective Order, even if such enforcement proceedings occur  
after termination of this action.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_

1  
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7  
8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
10

11 Case No. CV

-GAF

12 STANDING ORDER RE: PROTECTIVE  
13 ORDERS AND TREATMENT OF  
14 CONFIDENTIAL INFORMATION

15 Plaintiff(s),

16 v.

17  
18 Defendant(s).  
19

20 The Court has adopted the following substantive and procedural guidelines for protective  
21 orders, whether stipulated or not:

22 I. Guidelines for Protective Order Provisions.

23 A. Clear and Precise. A protective order must be sufficiently precise and clear, so  
24 that:

- 25 1. All parties and other persons who are bound by the order know precisely what  
26 they are required to do, permitted to do, and forbidden from doing.  
27 2. In the event that any party seeks to have another party who supposedly  
28 violated the order held in contempt, it is necessary that the order contain no  
ambiguity concerning

EXHIBIT B

the parties' rights and responsibilities.

**B. Narrowly Tailored.** A protective order must be narrowly tailored and cannot be overbroad. Therefore,

1. The documents, information, items or materials that are subject to the protective order shall be described in a meaningful fashion. (For example, "blueprints," "customer lists," or "market surveys," etc.) It is not sufficient to use only the conclusory term "trade secrets."
2. In proposing or agreeing to the protection of "trade secrets," the definition for that term in California Civil Code § 3426.1 should be incorporated into the protective order, either by reference or by quotation.<sup>1</sup>

**C. Burden of Proof.** The party designating information, documents, materials or items as confidential bears the burden of establishing the confidentiality.

**D. Procedures for Filing Confidential Information with the Court.** All Court orders will be presumptively available to the public. Therefore, if a protective order provides that evidence may be filed under seal and if a party does file such evidence under seal, all papers that refer to or rely upon such evidence shall designate the particular aspects that are confidential. This will enable the Court, in drafting orders, to determine whether there is evidence which the Court should attempt not to disclose. Absent such advance notification, the Court will be free to incorporate all such evidence in its written and oral rulings.

**E. Use of Confidential Information at Trial.** In the event that the case proceeds to trial, all of the information that was designated as confidential and/or kept and maintained pursuant to the terms of a protective order becomes public and will be presumptively

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<sup>1</sup> Cal. Civil Code § 3426.1 provides that trade secret "means information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (1) Derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and (2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

1 available to all members of the public, including the press, unless sufficient cause is shown in  
 2 advance of trial to proceed otherwise.

3 **II. Procedure for Obtaining Protective Order.**

4 A. **Stipulated Protective Orders**. Any proposed stipulated protective order submitted to  
 5 the Court shall reflect the guidelines set forth in this order. If satisfactory, the Court will sign  
 6 the proposed protective order and cause it to be filed. If not satisfactory, the Court will return  
 7 it to counsel, with reference to the provisions that have to be added or changed. Thereafter,  
 8 any revised proposed stipulated protective order shall contain such modifications.

9 B. **Motions for a Protective Order**. In the event that the parties are unable to agree upon  
 10 the terms of a protective order, the procedure for obtaining such an order is that set forth in  
 11 the Local Rules concerning discovery motions. In civil cases, the motion will be addressed to  
 12 and resolved by the magistrate judge. The party initiating the motion shall ensure that the  
 13 proposed order is attached to the joint stipulation. When filing the motion, the party seeking  
 14 the protective order shall lodge with the court *in camera* copies of the evidence for which it  
 15 seeks a protective order.

16 The Court thanks counsel for their anticipated cooperation and compliance with this order.

17  
 18 Dated:

19 **GARY ALLEN FEES**  
 20 **United States District Judge**

21 *[Signature]*  
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